



**Statutory Rules 1991 No. 95<sup>1</sup>**

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## **Mutual Assistance in Criminal Matters (Hong Kong) Regulations**

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Mutual Assistance in Criminal Matters Act 1987*.

Dated 16 May 1991.

**W. B. CAMPBELL**  
Administrator

By His Excellency's Command,

**MICHAEL DUFFY**  
Attorney-General

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### **Citation**

1. These Regulations may be cited as the Mutual Assistance in Criminal Matters (Hong Kong) Regulations.

### **Commencement**

2. These Regulations commence on 3 June 1991.

### **Interpretation**

3. In these Regulations, “the Act” means the *Mutual Assistance in Criminal Matters Act 1987*.

Application of the Act

4. The Act applies in relation to Hong Kong subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the Agreement concerning the Investigation of Drug Trafficking and the Confiscation of the Proceeds of Drug Trafficking, being the Agreement the text of which is set out in the Schedule, made between the Government of Hong Kong and the Government of Australia at Hong Kong on 22 April 1991.

SCHEDULE

Regulation 4

AN AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA  
AND THE GOVERNMENT OF HONG KONG CONCERNING THE  
INVESTIGATION OF DRUG TRAFFICKING AND THE CONFISCATION  
OF THE PROCEEDS OF DRUG TRAFFICKING

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The Government of Australia and the Government of Hong Kong, having been duly authorised to conclude this Agreement by the Sovereign Government which is responsible for its foreign affairs, (the Parties),

Desiring to provide mutual assistance, to the extent possible within their respective laws, in the investigation and prosecution of drug trafficking offences and in the confiscation of the proceeds of drug trafficking,

Have agreed as follows:

**ARTICLE 1**

**SCOPE OF ASSISTANCE**

1. The Parties shall, in accordance with the provisions of this Agreement, grant to each other assistance in investigations and proceedings in respect of drug trafficking including the tracing, restraining and confiscation of the proceeds of drug trafficking.
2. This Agreement shall not derogate from other obligations between the Parties pursuant to other agreements or arrangements or otherwise, nor prevent the Parties providing assistance to each other pursuant to other agreements or arrangements or otherwise.
3. This Agreement is intended solely for mutual assistance between the Parties. The provisions of the Agreement shall not create any right on the part of any private person to obtain assistance under this Agreement or to impede the execution of a request.

**ARTICLE 2**

**DEFINITIONS**

1. For the purpose of this Agreement:
  - (a) proceedings are instituted:
    - (i) in Hong Kong when a magistrate issues a warrant or summons, when a person is charged with an offence after having been taken into custody without a warrant, or when a bill of indictment is preferred, whichever is earliest in time;
    - (ii) in Australia when an information has been laid before a competent authority, when a person is charged with an offence after having been taken into custody without a warrant, or when a bill of indictment is preferred, whichever is earliest in time;
  - (b) “proceeds” means any property that is derived or realised, directly or indirectly, by any person from drug trafficking, or the value of any such property;
  - (c) “property” includes money and all kinds of moveable or immoveable and tangible or intangible property, and includes any interest in such property;
  - (d) “drug trafficking” means engaging or being concerned, directly or indirectly, in the unlawful cultivation, production, supply, possession for supply, transport, storage, import or export of a dangerous drug or assisting another to retain or

dispose of the proceeds of drug trafficking, whether in Hong Kong, Australia or elsewhere;

(e) “dangerous drug” means:

- (i) in relation to Hong Kong, any of the drugs or substances specified in Part I of the First Schedule to the Dangerous Drugs Ordinance Cap. 134 as amended from time to time; or
- (ii) in relation to Australia, a narcotic substance as defined in the Proceeds of Crime Act 1987.

### **ARTICLE 3**

#### **CENTRAL AUTHORITIES**

A Central Authority shall transmit and receive all requests for the purposes of this Agreement. Unless the relevant Party designates another authority, the Central Authority for the Government of Hong Kong shall be the Attorney General or his duly authorised officer; the Central Authority for the Government of Australia shall be the Attorney-General's Department, Canberra.

### **ARTICLE 4**

#### **CONTENTS OF REQUESTS**

1. In all cases requests for assistance shall be accompanied by:
  - (a) the name of the competent authority conducting the investigation or proceedings to which the request relates;
  - (b) a description of the nature of the investigation or proceedings, including a summary of the relevant facts and laws;
  - (c) a statement of the purpose for which the request is made and the nature of the assistance sought;
  - (d) a statement of the need, if any, for confidentiality and the reasons therefor; and
  - (e) notice of any time limit within which compliance with the request is desired.

2. Documents accompanying requests for assistance shall also contain the following information:

- (a) where possible, the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings;
- (b) where necessary, details of any particular procedure or requirement that the Requesting Party wishes to be followed and the reasons therefor;
- (c) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that the evidence or material may be found in the jurisdiction of the Requested Party unless this appears from the request itself;
- (d) in the case of requests to take evidence from a person, a statement as to whether sworn or affirmed statements are required, and a description of the subject matter of the evidence sought;
- (e) in the case of search and seizure, a declaration that seizure could be obtained by compulsory measures if the property were situated within the jurisdiction of the Requesting Party;
- (f) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which it is anticipated that the exhibit will be returned.

3. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional material be furnished.

4. A request shall be made in writing. In urgent circumstances and where permitted by the Requested Party, a request may be made orally but shall be confirmed in writing promptly thereafter.

## ARTICLE 5

### EXECUTION OF REQUESTS

1. To the extent permitted by its laws, the Requested Party shall provide assistance in accordance with the requirements specified in the request, and shall respond to the request as soon as practicable after it has been received.

2. The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

4. The Requesting Party shall promptly inform the Requested Party of any circumstances including any action taken in the courts of the Requesting Party which may affect the request or its execution.

### ARTICLE 6

#### REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. Assistance shall be refused if:

- (a) the Requested Party is of the opinion that execution of the request would be contrary to the interests of justice; or
- (b) the Requested Party is of the opinion that the request, if granted, would prejudice its essential or like interests.

2. Assistance may be refused if:

- (a) the request relates to the prosecution or punishment of a person for an offence which is committed outside the jurisdiction of the Requesting Party and the Requested Party cannot prosecute that person for such an offence committed outside its jurisdiction in similar circumstances;
- (b) provision of the assistance sought could prejudice the safety of any person or impose an excessive burden on resources; or
- (c) the Requesting Party fails, in response to a request by the Requested Party, to give an assurance that the death penalty will not be imposed for the offence to which the request relates or, if imposed, will not be carried out.

3. The Requested Party may refuse or postpone assistance if execution of the request would interfere with an ongoing investigation or proceedings within its jurisdiction.

4. Before refusing to grant a request for assistance the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to conditions, it shall comply with those conditions.

**ARTICLE 7**

**INFORMATION AND EVIDENCE**

1. The Parties may make requests for information and evidence for the purpose of an investigation or proceedings.
2. The Requested Party shall as appropriate and in so far as its laws permit:
  - (a) provide information and documents or copies thereof for the purpose of an investigation or proceedings in the jurisdiction of the Requesting Party;
  - (b) take the evidence of witnesses and require witnesses to produce documents, records or other material for transmission to the Requesting Party;
  - (c) search for, seize and deliver to the Requesting Party any relevant material, and provide such information as may be required by the Requesting Party concerning the place of seizure, the circumstances of seizure and the subsequent custody of the material seized prior to delivery.
3. Where required by the Requested Party, the Requesting Party shall return material provided under this Article when no longer needed.

**ARTICLE 8**

**PROCEEDS**

1. A request may be made for assistance in securing the confiscation of proceeds. Such assistance shall be given by whatever means are appropriate. This may include enforcing an order made by a court in the jurisdiction of the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.
2. A request may be made for assistance in the restraint of property for the purpose of ensuring that it will be available to satisfy any order of a court for the recovery of proceeds.
3. Proceeds confiscated pursuant to this Agreement shall accrue to the Requested Party, unless otherwise mutually determined in a particular case.
4. Where action has been taken in the jurisdiction of the Requested Party pursuant to a request for assistance under paragraph 1 or 2 of this Article, and there is a representation in Hong Kong or Australia as the case may be by a person affected by the order, the relevant Party shall inform the other Party as soon as possible and shall also inform it promptly of the outcome of that representation.

5. A request for assistance in the restraint of property shall be accompanied by:
- (a) the original or a copy of any relevant restraint order;
  - (b) a statement describing the grounds for believing that the person subject to the investigation or proceedings has benefited from drug trafficking;
  - (c) a description of the property to which measures of restraint are to be applied including as far as possible the location of the property;
  - (d) a statement specifying the person or persons in possession of the property, its connection with the subject of the investigation or proceedings and its connection with the offence to which they relate; and
  - (e) a statement describing the proceedings which have been or are about to be instituted, and where proceedings have not been instituted, when and in what form it is intended that they will be.
6. A request for confiscation shall be accompanied by:
- (a) the original or a copy of any order in relation to the proceeds of drug trafficking and a summary of the grounds upon which the order was made;
  - (b) where the person against whom the order is made did not appear in the proceedings leading to the order, a statement that the person received notice of the proceedings in accordance with the law of the Requesting Party, and when that notice was received;
  - (c) a statement that neither the order nor any conviction to which it relates is subject to appeal, and that the period for lodging such appeals has expired; and
  - (d) a description of the property to which measures of confiscation are to be applied including as far as possible the location of the property.

## ARTICLE 9

### LIMITATION OF USE AND CONFIDENTIALITY

1. The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
2. The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.



3. The Requested Party shall to the extent requested keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it or where the disclosure is specifically authorized by the Requesting Party in accordance with any terms and conditions it may specify.

4. Subject to paragraph 3 of this Article, if the request cannot be executed without breaching confidentiality requirements stated in the request, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

#### ARTICLE 10

##### AUTHENTICATION

1. Documents or materials supporting a request for assistance involving the use of compulsory measures or the confiscation of proceeds shall be authenticated in accordance with paragraph 2. Documents or materials furnished in response to a request shall be similarly authenticated if requested.

2. Documents and materials are authenticated for the purposes of this Agreement if:

- (a) they purport to be signed or certified by any person in his capacity as a judge, magistrate or officer of the court in question, or by or on behalf of the Central Authority of the Party sending the documents or material; and
- (b) they purport to be sealed with an official seal of the Party sending the documents or of a department or officer of that Party.

#### ARTICLE 11

##### REPRESENTATION AND EXPENSES

1. The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

2. The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;

(c) expenses of translation of documents; and

(d) travel expenses and allowances of persons.

3. If the execution of a request involves extraordinary or exceptional expenses the Parties shall consult to determine how these shall be met.

## **ARTICLE 12**

### **CONSULTATION**

The Parties shall consult promptly, at the request of either, concerning the interpretation or application of this Agreement either generally or in relation to a particular case.

## **ARTICLE 13**

### **ENTRY INTO FORCE, EXPIRY AND TERMINATION**

1. This Agreement shall apply to a request pursuant to it whether or not the drug trafficking to which the request relates occurred prior to the Agreement entering into force.

2. This Agreement shall enter into force on the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with, and shall remain in force for 3 years from that date. Thereafter the Agreement shall remain in force for further successive periods of one year provided that both Parties have agreed no less than 180 days before the end of the initial period, and each current one year period, to extend it for a further year.

3. Either Party may terminate this Agreement at any time by giving 180 days' written notice to the other Party.

**IN WITNESS WHEREOF** the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

***Mutual Assistance in Criminal Matters (Hong Kong)***  
**1991 No.95**

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**DONE** in duplicate at Hong Kong on the Twenty-second day of April One Thousand Nine Hundred and Ninety One.

**For the Government  
of Australia:  
GARETH EVANS**

**For the Government  
of Hong Kong:  
A. P. ASPREY**

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**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 23 May 1991.